

## **DECISION**

Dispute Codes      MND MNR MNSD

### Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord seeking a Monetary Order for unpaid rent, damage to the rental unit, and to recover the cost of the filing fee.

Service of the hearing documents was done in accordance with section 89 of the *Act*, sent via registered mail on April 3, 2009. The Canada Post tracking number was provided in the Landlord's verbal testimony. The Tenant is deemed to be served the hearing documents on April 8, 2009, the fifth day after they were mailed as per section 90 of the *Act*.

Both the Landlord and Tenant appeared, acknowledged receipt of evidence submitted by the other, gave affirmed testimony, were provided the opportunity to present their evidence orally, in writing, in documentary form, and to cross exam each other.

All of the testimony and documentary evidence was carefully considered.

### Issue(s) to be Decided

Is the Landlord entitled to monetary compensation pursuant to sections 67 and 72 of the *Residential Tenancy Act* and is he entitled to retain the security deposit as partial satisfaction of his claim pursuant to section 38 of the *Act*?

### Background and Evidence

The tenancy was a fixed term tenancy commencing on September 12, 2008 and was scheduled to end on a date in March 2009 that was to be finalized after the signing of the agreement. The Landlord confirmed via e-mail with the Tenant on January 30, 2009 that the tenancy would end on March 6, 2009. Rent was payable on the 1<sup>st</sup> of each

month in the amount of \$950.00 and the Tenant paid a security deposit in the amount of \$500.00 on September 4, 2008. These facts are not in dispute.

The Landlord testified that the Tenant provided him with postdated cheques for rent payments for the full term of the tenancy but that the Tenant put a stop payment on the February and March cheques. The Landlord is claiming \$950.00 for February rent and \$150.00 for March rent. The Landlord withdrew his claim for late payment fees as he did not have fees written into his tenancy agreement.

The Tenant argued that he had to put the stop payment on the cheques because he did not have the funds to cover the cheques. The Tenant testified that he moved out of the rental unit on Saturday March 7, 2009 and that he did not provide the Landlord with his forwarding address in writing nor did he ever request the return of his security deposit from the Landlord in writing.

The Landlord is claiming \$100.00 for damages caused to a bicycle, damage to the couch, and the unclean condition of the carpet and stove. The Landlord testified that he did not complete a move-in or move-out inspection report with the Tenant.

### Analysis

I find that in order to justify payment of damages under section 67 of the *Act*, the Applicant Landlord would be required to prove that the other party did not comply with the *Act* and that this non-compliance resulted in costs or losses to the Applicant pursuant to section 7. It is important to note that in a claim for damage or loss under the *Act*, the party claiming the damage or loss, in this case the landlord, bears the burden of proof and the evidence furnished by the Applicant Landlord must satisfy each component of the test below:

#### Test For Damage and Loss Claims

1. Proof that the damage or loss exists

2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the *Act* or agreement
3. Verification of the Actual amount required to compensate for loss or to rectify the damage
4. Proof that the claimant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage

In regards to the Landlord's right to claim damages from the Tenant, Section 7 of the *Act* states that if the landlord or tenant does not comply with this *Act*, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the *Act* grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

**Claim for unpaid rent.** The Landlord claims for unpaid rent of \$950.00 for February 2009 and \$150.00 for March 2009, pursuant to section 26 of the *Act* which stipulates a tenant must pay rent when it is due. I find that the Tenant has failed to comply with a material term of the tenancy agreement which stipulates that rent is due monthly on the first of each month.

**Claim for Damages** – The Landlord has claimed for damages to a bicycle, couch, and dirty carpet and stove but did not provide any evidence to prove the condition of these items at the onset of the tenancy and at the completion of the tenancy. Based on the aforementioned I find that the Landlord has failed to prove the test for damages as listed above and I hereby dismiss this claim, without leave to reapply.

**Filing Fee \$50.00.** I find that the landlord has succeeded in large and that he should recover the filing fee from the Tenant.

**Claim to keep all or part of security deposit.** I find that the Landlord's claim meets the criteria under section 72(2)(b) of the *Act* and order this monetary claim to be offset

against the Tenant's security deposit of \$500.00 plus interest of \$2.44 for a total of \$502.44.

I note that the Landlord was not compliant with Section 19 of the *Residential Tenancy Act* in charging the Tenant more than ½ of a month's rent for a security deposit but this does not prevent the full amount to be off-set against the monetary claim.

**Monetary Order** – I find that the Landlord is entitled to a monetary claim, that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit, and that the Landlord is entitled to recover the filing fee from the Tenant as follows:

|   |                   |
|---|-------------------|
| Unpaid Rent for February and March 2009 (\$950.00 + \$150.00) | \$1,100.00        |
| Filing fee  | 50.00             |
| Sub total (Monetary Order in favor of the landlord)           | <b>\$1,150.00</b> |
| Less Security Deposit of \$330.00 plus interest of \$5.60     | -502.44           |
| <b>TOTAL OFF-SET AMOUNT DUE TO THE LANDLORD</b>               | <b>\$647.56</b>   |

### Conclusion

I HEREBY FIND in favor of the Landlord's monetary claim. A copy of the Landlord's decision will be accompanied by a Monetary Order for \$647.56. The order must be served on the respondent Tenant and is enforceable through the Provincial Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 06, 2009.

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Dispute Resolution Officer